IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 4814 of 2004

Between:

1 The Government of Andhra Pradesh, represented by its Principal Secretary, Home Department, Secretariat, Hyderabad.
2 The Director General and Inspector General of Police, Lakdikapool, Hyderabad.
3 The Director, A.P.Police Academy, Himayathsagar, Hyderabad.

..... PETITIONERS

AND

C. Govinda Rajan, Office Superintendent, [Under orders of Reversion]
A.P.Police Academy, Himayatsagar, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ or direction more particularly one in the nature of "WRIT OF CERTIORARI' calling for the records connected with order in O.A. No.7106 of 1998 dated 24.1.2003 on the file of the Hon'ble A.P.Administrative Tribunal, Hyderabad and to quash the same as erroneous and contrary to law.

Counsel for the Petitioners: GP FOR SERVICES I

Counsel for the Respondent: MR.A.V.SESHA SAI

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed by the State assailing the order passed by A.P. Administrative Tribunal (for brevity Tribunal) in O.A.No.7106 of 1998, dated 24.1.2003.

2. The matter has a circuitous route right from 1990. But, however, for the sake of understanding the situation, it is necessary to refer to certain events. The respondent was initially appointed as Typist in Police Training College at Nellore. Subsequently he was transferred to Police Training College, Amberpet, at Hyderabad in 1989. Thereafter he was promoted as Senior Assistant in Police Training College, Hyderabad on 3.7.1989. While so he was sent on deputation to Andhra Pradesh Police Academy (APPA) on 26.4.1991. Thereafter the Police Training College was abolished by virtue of G.O.Ms.No.557, Home Department, dated 17.11.1992 and all the persons working in the said Training College were attached to APPA. Ultimately the Police Training College was merged with APPA on 11.1.1992. After the merger, by an order dated 16.5.1992, the probation of the respondent was declared in the category of Senior Assistant with effect from 2.7.1990. Afterwards the respondent was promoted as Superintendent on 4.12.1992 on out of seniority basis. Thereafter his consent was called for whether he would be absorbed in APPA and accordingly the respondent gave his consent on 16.2.1995.

3. While so by an order dated 10.5.1995, he was reverted as Senior Assistant, and the said order was challenged by the respondent in O.A.No.5051 of 1995 and the said OA was allowed by the Tribunal on 22.3.1996 and the reversion order was set aside on the ground of lack of notice. Thereafter, after issuing show cause notice, another order was passed reverting him to the post of Senior Assistant on 31.5.1996 and he challenged the said order in OA.No.2928 of 1996, and he was re-promoted on 6.8.1996. Ultimately he was again

promoted as Superintendent on 7.4.2000. But, however, the Government reverted the respondent by an order dated 22.6.1999 on the ground that he was not a Graduate. Challenging the said order, he filed OA.No.4525 of 1999 and the learned Tribunal granted interim order on 21.7.1999 suspending the Government Memo No.6046/Genl.C/99-1, dated 22.6.1999. Thereafter the respondent challenging the proceedings dated 8.10.1998 filed OA.No.7106 of 1998 and the learned Tribunal allowed the said OA. Against the said order, the present Writ Petition has been filed by the State.

4. The learned Government Pleader for Services-I firstly submits that the respondent was lacking in essential qualification, viz., Degree in Graduation, when he was promoted as Superintendent and secondly after deputation, he was not absorbed in APPA. The Tribunal without taking these two aspects into consideration passed an erroneous order.

5. On the other hand the learned counsel for the respondent takes this Court through various events right from the appointment of the respondent till the date of his promotion and filing of several O.As., challenging the reversion orders from time to time. He submits that the requirement of Graduation is not necessary in view of the provisions contained in A.P. Ministerial Service Rules, 1966 (hereinafter referred to as the Rules). The learned counsel would refer to Rule 23 of the Rules and submits that under sub-Rule (2), in cases of promotion from lower category to higher category one has to pass the required test and it is not necessary to possess the Graduate qualification in cases of recruitment by transfer. Therefore, the order of the Tribunal cannot be said to suffer from any illegality or irregularity.

6. Though the Tribunal did not consider this aspect, it is necessary for us to take into consideration the Rule position. Rule 23 of the Rules reads as hereunder:

> **Rule 23. Special Qualifications**:- (1) No candidate shall be eligible for appointment to the service in the categories and posts specified in column (2) of Annexure I by the method specified in the corresponding entry in column (3) unless he possesses the qualifications specified in the corresponding entry in column (4) thereof.
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> 2. No member of the service shall be eligible for promotion to

any of the posts mentioned in column (1) of Annexure II, unless and until he has passed the special tests or undergone the training, if any, specified in the corresponding entry in column (2) thereof:

Provided that no member of the service shall be eligible for promotion to the post mentioned in column (1) of the table below to the post mentioned in column (2) unless he has passed the tests specified in column (3) thereof:

1	2	3
Special category Stenographer.	Superintendent	Departmental or Special tests, or both, prescribed for the posts of Superintendent in the department or office concerned.
(ii) Upper Division Stenographer who has opted for the clerical line.	Superintendent	Departmental or Special tests, or both, prescribed for the posts of Superintendent in the department or office concerned.

Provided xx xx xx xx

7. Under Annexure I, in respect of Superintendents in the offices of Heads of Departments and Directorates, the method of promotion is one should hold the Degree by a recognized University in India.

Sl.No. (1)	Categories and Posts. (2)	Method of recruitment. (3)	Qualifications (4)
I	Superintendents in the offices of Heads of Departments and Directorates	Recruitment by transfer	Must hold a degree of any University in India or any equivalent qualification.

But, however, in respect of promotion to the post of Superintendent post in Police Department, in Annexure II it is mentioned that one has to pass Accounts Test for Subordinate Officers, Part I. Annexure Part-II is extracted below:

Posts(1)	Test and Training(2)
4. Superintendent	Accounts Test for Subordinate Officers, Part-I.

Therefore, by virtue of this provision, it is now clear that in case of promotion from the lower category to higher category the requirement is only a pass in the prescribed test for subordinate officers and Graduation qualification is only prescribed for promotion to the officers who come on recruitment by transfer from other service. In the instant case, as the respondent was regularized in service as Senior Assistant with effect from 2.7.1990, he need not possess Graduate qualification. Under those circumstances he is entitled to be considered for the post of Superintendent on the basis of the declaration of probation on 2.7.1990 subject to availability of vacancies. If there are any other seniors already working in APPA and whose probation was declared prior to 2.7.1990, they will have to be promoted first and thereafter the respondent should be considered for promotion. Under these circumstances though the Tribunal has come to the conclusion that the reversion was illegal, we find that the matter ought to have been considered from the angle as referred to above in which event also the reversion cannot be sustained.

7. Accordingly the Writ Petition is disposed of with a direction that the petitioners shall consider the case of the respondent for promotion to the post of Superintendent basing on the seniority in the category of Senior Assistant from 2.7.1990 and promote him to the post of Superintendent subject to availability of vacancies. This exercise shall be done within a period of two (02) weeks from the date of receipt of a copy of this order. Pending this exercise, status quo as obtaining today shall be continued. No costs.

(G.BIKSHAPATHY, J.)

23rd March, 2005.

SSR (P.S.NARAYANA,J.)

To

1 The Principal Secretary, Home Department,Government of Andhra Pradesh, Secretariat, Hyderabad.
2 The Director General and Inspector General of Police, Lakdikapool, Hyderabad.
3 The Director, A.P.Police Academy, Himayathsagar, Hyderabad.

4 The Registrar, A.P. Administrative Tribunal, Hyderabad.

5 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

6 2 CD copies

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